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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 MATTHEW C. BOLDEN,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting
15 Commissioner of Social Security,

16 Respondent.
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Case No. ED CV 15-01560-DFM

MEMORANDUM OPINION
AND ORDER

19 Matthew C. Bolden (“Plaintiff”) appeals from the final decision of the
20 Administrative Law Judge (“ALJ”) denying his application for Social Security
21 Disability Insurance Benefits (“DIB”). For the reasons discussed below, the
22 Commissioner’s decision is affirmed and this matter is dismissed with
23 prejudice.

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I.

BACKGROUND

Plaintiff filed an application for DIB on March 1, 2012. Administrative Record (“AR”) 87, 206-12.¹ After his application was denied, he requested a hearing before an Administrative Law Judge (“ALJ”). AR 97. After a postponement to allow Plaintiff time to find a representative, AR 52-68, a hearing was held on October 24, 2013, at which Plaintiff, who was then represented by counsel, testified, AR 35-51. In a written decision issued November 27, 2013, the ALJ denied Plaintiff’s claim for benefits. AR 20-30. In reaching his decision, the ALJ found that Plaintiff had the medically determinable impairments of lumbar-spine degenerative disease, hypertension, anxiety, and depression. AR 22. But at step two of the five-step disability-evaluation process, the ALJ found that none of those impairments was “severe” before March 31, 2010, Plaintiff’s date last insured. AR 22-29. The ALJ therefore found that Plaintiff was not disabled, and he did not reach the remaining steps in the evaluation process. AR 29-30.

Plaintiff requested review of the ALJ’s decision. AR 12-14. On June 8, 2015, the Appeals Council denied review. AR 1-6. This action followed.

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¹ Plaintiff also filed an application for Supplemental Security Income (“SSI”), AR 213-16, but it appears that his application was denied at the state-agency level, probably due to his wife’s income of \$5,500 a month, see AR 214; 20 C.F.R. § 416.1100. In any event, the ALJ addressed only Plaintiff’s claim for DIB, see AR 20, and on appeal, Plaintiff does not argue that he is entitled to SSI, see JS at 2 (stating that Plaintiff “seeks judicial review” of the Commissioner’s “denying his claim for a period of disability, disability insurance benefits, under Title II of the Social Security Act”).

II.

DISCUSSION

Plaintiff argues that the ALJ failed to “properly consider[] the medical evidence as contained in the treating opinion of Paul Najarian, M.D,” Joint Stipulation (“JS”) at 4, and that “[t]he medical evidence as provided by Dr. Najarian demonstrates that [Plaintiff] suffers from a severe impairment thereby satisfying the de minimis step two test,” *id.* at 9.

A. Applicable Law

Three types of physicians may offer opinions in Social Security cases: those who treated the plaintiff, those who examined but did not treat the plaintiff, and those who did neither. *See* 20 C.F.R. § 404.1527(c); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (as amended Apr. 9, 1996). A treating physician’s opinion is generally entitled to more weight than an examining physician’s opinion, which is generally entitled to more weight than a nonexamining physician’s. *Lester*, 81 F.3d at 830. When a treating or examining physician’s opinion is uncontroverted by another doctor, it may be rejected only for “clear and convincing reasons.” *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Lester*, 81 F.3d at 830-31). Where such an opinion is contradicted, the ALJ must provide only “specific and legitimate reasons” for discounting it. *Id.*; *see also Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). Moreover, “[t]he ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *accord Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). The weight accorded to a physician’s opinion depends on whether it is consistent with the record and accompanied by adequate explanation, the nature and extent of the treatment relationship, and the doctor’s specialty, among other things. § 404.1527(c).

1 At step two of the sequential disability determination, an ALJ must
 2 determine whether the claimant has “a medically severe impairment or
 3 combination of impairments.” Keyser v. Comm’r Soc. Sec. Admin., 648 F.3d
 4 721, 725 (9th Cir. 2011). This inquiry is “a de minimis screening device to
 5 dispose of groundless claims.” Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
 6 1996) (citing Bowen v. Yuckert, 482 U.S. 137, 153-54 (1987)).

7 A medically determinable impairment is “severe” if it “significantly
 8 limits [the claimant’s] physical or mental ability to do basic work activities.”
 9 § 404.1520(c); see also § 404.1521(a). “Basic work activities” are “the abilities
 10 and aptitudes necessary to do most jobs,” which include physical functions
 11 such as walking, standing, sitting, pushing, and carrying, and mental functions
 12 such as understanding and remembering simple instructions, responding
 13 appropriately in a work setting, and dealing with changes in a work setting.
 14 § 404.1521(b). An impairment is not severe if it presents only a slight
 15 abnormality with “no more than a minimal effect on an individual’s ability to
 16 work.” SSR 85-28, 1985 WL 56856, at *3 (1985); Webb v. Barnhart, 433 F.3d
 17 683, 686-87 (9th Cir. 2005); Smolen, 80 F.3d at 1290.

18 A “finding of no disability at step two” may be affirmed when there is a
 19 “total absence of objective evidence of severe medical impairment.” Webb, 433
 20 F.3d at 688 (reversing a step two determination “because there was not
 21 substantial evidence to show that [the claimant’s] claim was ‘groundless’”
 22 (citing Smolen, 80 F.3d at 1290)). A court must determine whether substantial
 23 evidence in the record supported the ALJ’s finding that a particular
 24 impairment was not severe. See id. at 687.

25 **B. Relevant Facts**

26 In a disability report completed as part of his March 2012 DIB
 27 application, Plaintiff alleged that he has been disabled since January 31, 2006,
 28 because of his “[h]eart condition 3 st[e]nts,” “mental problems,” back and

1 neck pain, “right shoulder problems,” and “right knee problems.”² AR 230.
2 Plaintiff last met the insured-status requirements under the Social Security Act
3 on March 31, 2010, AR 22; thus, in order to obtain DIB, he needed to show
4 that he became disabled on or before that date.

5 On October 11, 2013, Dr. Najarian, Plaintiff’s primary-care physician,
6 wrote a letter stating that he had treated Plaintiff for 10 years. AR 1848. Dr.
7 Najarian stated that Plaintiff had a “history of” anxiety disorder, chronic
8 sinusitis, gastroesophageal reflux disease, recurrent mild depression,
9 intervertebral disc degeneration, hypertension, hyperlipidemia, ventricular
10 fibrillation, coronary artery disease with stent, and anemia. AR 1848. Dr.
11 Najarian wrote that Plaintiff has “issues with his pain and neuropathy
12 secondary to his lumbar laminectomy,” “limited range of motion in his spine
13 and cannot lift > 10 lbs without pain,” and “limited ability to stand or sit > 30
14 minutes at a time.” Id.

15 In his October 24, 2013 written decision, the ALJ summarized the
16 medical evidence and concluded that Plaintiff’s medical conditions were not
17 severe. AR 22-29. In doing so, he accorded “minimal weight” to Dr.
18 Najarian’s opinion. AR 28.

19 **C. Discussion**

20 Plaintiff claims that the ALJ rejected Dr. Najarian’s opinion “without
21 articulating any legally sufficient rationale.” JS at 8. But the ALJ did provide
22 clear and convincing reasons for according minimal weight to Dr. Najarian’s
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25 ² As previously mentioned, ALJ found that Plaintiff had the medically
26 determinable impairments of lumbar-spine degenerative disease, hypertension,
27 anxiety, and depression. AR 22. Plaintiff does not challenge the ALJ’s findings
28 that his alleged right-shoulder and right-knee problems and heart condition
were not medically determinable impairments during the insured period.

1 opinion, all of which were supported by substantial evidence.³

2 First, the ALJ correctly found that Dr. Najarian “primarily summarized
3 [Plaintiff’s] mental and physical diagnoses,” and “did not provide medically
4 acceptable diagnostic findings to support the functional assessment prior to the
5 date last insured.” AR 28; see Thomas, 278 F.3d at 957 (finding that ALJ need
6 not accept opinion of treating physician if “opinion is brief, conclusory, and
7 inadequately supported by clinical findings”); Rayment v. Colvin, No. 15-
8 05904, 2016 WL 6575011, at *5 (W.D. Wash. Nov. 7, 2016) (finding that
9 although medical evaluations made after expiration of insured status are
10 relevant, doctor’s opinion was of “limited probative value” when “it related to
11 a period nearly four years after plaintiff’s date last insured”). Indeed, Dr.
12 Najarian rendered his opinion in October 2013, and he nowhere states that it
13 reflected Plaintiff’s limitations on or before March 31, 2010, Plaintiff’s date last
14 insured. See AR 1848. And the opinion in fact appears to reflect only
15 Plaintiff’s then-current condition, as it is phrased in the present tense and lists
16 at least two conditions—ventricular fibrillation and coronary artery disease
17 with stent—that developed almost two years after March 2010. See AR 1848;
18 see also AR 314 (Jan. 2012 hospital note showing placement of stents), 316-22
19 (Jan. 2012 hospital records showing inpatient treatment for “[c]hest pain with
20 V-Fib cardiac arrest”).⁴

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22 ³ Because no other doctor rendered an opinion regarding Plaintiff’s
23 physical limitations, the ALJ was required to give clear and convincing reasons
24 for rejecting Dr. Najarian’s opinion. Carmickle, 533 F.3d at 1164.

25 ⁴ Plaintiff apparently first suffered ventricular fibrillation and cardiac
26 arrest on January 12, 2012, when he became short of breath after he “cut down
27 a tree & was loading the chopped wood into his truck bed.” AR 316. That
28 Plaintiff was able to engage in such physical labor as late as January 2012
further bolsters the ALJ’s finding that Dr. Najarian’s functional assessment—
which limited Plaintiff to lifting no more than 10 pounds and standing for no

1 The ALJ also permissibly rejected Dr. Najarian’s opinion because it was
2 inconsistent with the “objective medical evidence as a whole,” which
3 “show[ed] [that Plaintiff] received sporadic treatments for his impairments
4 prior to the date last insured” and that his conditions “responded to his
5 treatments.” AR 28; see Thomas, 278 F.3d at 957; Senko v. Astrue, 279 F.
6 App’x 509, 511 (9th Cir. 2008) (finding that ALJ gave several “clear and
7 convincing” reasons for rejecting treating doctor’s opinion, including that his
8 opinion was not supported by his treatment notes or other evidence in the
9 record and that treatment notes showed that conditions responded to
10 medication). Indeed, although Dr. Najarian attributes Plaintiff’s limitations to
11 his lumbar-spine condition, Plaintiff’s medical records show that his back
12 problem basically resolved after he underwent surgery and physical therapy in
13 early 2007, and that Plaintiff thereafter only rarely complained of neck or back
14 pain.

15 Specifically, Plaintiff’s medical records show that he underwent a
16 lumbar-spine MRI in August 2006, AR 751, and that in September, he was
17 diagnosed with right L4 radiculopathy secondary to a right L3/L4 extruded
18 disc herniation, AR 853. At an October 2006 appointment with Dr. Najarian,
19 Plaintiff complained of having low-back pain for three months and some
20 numbness and weakness. AR 337. Dr. Najarian found that Plaintiff had an
21 antalgic gait, some lumbar-spine tenderness, and a positive straight-leg raise on
22 the right but normal motor strength, sensation, and reflexes. AR 337-38. Dr.
23 Najarian diagnosed degeneration of the intervertebral disc and administered a
24 steroid injection. AR 338. In November 2006, Plaintiff reported that the
25 injection had helped and he requested another, which Dr. Najarian

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27 longer than 30 minutes at a time—did not reflect Plaintiff’s physical state on or
28 before March 31, 2010.

1 administered. AR 355-56. In February 2007, Plaintiff underwent L3-L4
2 laminectomy surgery. AR 370, 377. On June 3, 2007, Plaintiff reported that his
3 back pain had improved but that he was still unable to do physical activities
4 and “long sitting.” AR 376. A doctor found that Plaintiff had reduced lumbar-
5 spine range of motion, negative straight-leg tests, and some weakness; she
6 referred him to a pain program and physical therapy and prescribed pain
7 medication. AR 377. Plaintiff began physical therapy, and by June 20, 2007,
8 he reported that his pain level had improved. AR 409. At his next
9 appointments with Dr. Najarian, in August and September 2007, and
10 February, March, June, July, and mid-August 2008, Plaintiff did not complain
11 about any neck or back pain. AR 430, 462-63, 495-96, 503-04, 515-16, 536-38,
12 544-45, 572-73.

13 Plaintiff first complained of neck pain in late August 2008; upon
14 examination, Dr. Najarian found that Plaintiff had paracervical muscle
15 tenderness and also pain with neck movement, but he had normal
16 neurological, motor, and sensory function. AR 588-89. In November 2008,
17 Plaintiff complained of back pain; Dr. Najarian found that Plaintiff had
18 tenderness of the lumbosacral spine but a negative straight-leg test and a
19 normal gait. AR 617-18. Plaintiff complained of neck pain at two later
20 appointments; Dr. Najarian found that Plaintiff had tenderness with and
21 reduced and painful range of motion of the cervical spine, but normal
22 neurological, motor, and sensory function. AR 643-44 (Feb. 2009, complaining
23 of “moderate left neck pain for several week(s)” without numbness or
24 weakness); 678-79 (Sept. 2009, complaining of increased neck pain since
25 undergoing upper endoscopy). Plaintiff did not complain of any neck or back
26 pain at any of his other appointments with Dr. Najarian during the insured
27 period. See AR 597-98 (Sept. 2008), 663-64 (May 2009), 700-01 (June 2010),
28 718-19 (Oct. 2010). And in November 2010, shortly after Plaintiff’s date last

1 insured, Dr. Najarian found that Plaintiff had normal range of motion of the
2 lower back, a normal gait, and normal motor function, reflexes, and sensation
3 of the lower extremities. AR 731. As such, substantial evidence supports the
4 ALJ's finding that Dr. Najarian's opinion was inconsistent with the objective
5 medical evidence showing few back symptoms after he recovered from surgery.
6 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004)
7 ("an ALJ may discredit treating physicians' opinions that are conclusory, brief,
8 and unsupported by the record as a whole, or by objective medical findings"
9 (citations omitted)). And although the medical records show that Plaintiff's
10 physical condition worsened in 2012, the ALJ correctly found that those
11 developments did not occur within the "relevant time period."⁵ AR 25.

12 Moreover, given that the medical evidence shows that Plaintiff's back
13 condition essentially resolved with treatment, the ALJ did not err in finding
14 that Plaintiff's medically determinable lumbar-spine impairment was
15 nonsevere. Smolen, 80 F.3d at 1290 (finding that impairment is not severe
16 when "the evidence establishes a slight abnormality that has 'no more than a
17 minimal effect on an individual[']s ability to work'" (citations omitted)); Harris
18 v. Astrue, No. 08-0831, 2009 WL 801347, at *6 (N.D. Cal. Mar. 25, 2009)
19 (finding conditions that resolved with treatment were not severe). Plaintiff,
20 moreover, has challenged only the ALJ's rejection of Dr. Najarian's opinion,
21 and has made no argument regarding the ALJ's findings that Plaintiff's mental
22 conditions and hypertension were nonsevere. See generally JS. But in any
23 event, those findings are supported by the state-agency medical consultants'

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25 ⁵ As previously noted, around January 2012 (shortly before he applied
26 for DIB, in March 2012), Plaintiff was diagnosed with certain heart conditions.
27 As a result, he asked his cardiologist to place him on "permanent disability,"
28 but she declined, stating that his heart condition was not "permanently
disabling" and encouraging him to resume "routine exercise." AR 1348, 1350.

1 opinions that Plaintiff's mental conditions were nonsevere, AR 74-75, 84, 86,
2 and the lack of evidence of any functional limitations stemming from
3 Plaintiff's hypertension.


4 Remand is not warranted.

5 **III.**

6 **CONCLUSION**

7 For the reasons stated above, the decision of the Social Security
8 Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

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10 Dated: December 29, 2016

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13 DOUGLAS F. McCORMICK
14 United States Magistrate Judge
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